

Jones Paint and Glass and its insurance carrier, Workers Compensation Fund (referred to jointly as “Jones” hereafter), ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Sessions’ preliminary determination that K. P. T. is permanently and totally disabled under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUES PRESENTED

Mr. T. was injured while working for Jones on June 3, 2002. Jones accepted liability for Mr. T.’s injuries under the workers’ compensation system and paid some medical and disability benefits. On January 29, 2004, Mr. T. filed an application to compel payment of permanent total disability compensation.

Judge Sessions held an evidentiary hearing in this matter on March 11, 2005. On May 5, 2005, he issued his preliminary decision that Mr. T. is permanently and totally disabled within the meaning of § 413(1) of the Act. Jones then filed a timely motion for Appeals Board review of Judge Sessions’ decision.

Jones’ motion for review raises the following arguments: 1) a medical panel should have been appointed to determine Mr. T.’s medical limitations; 2) the “direct cause” requirement found in § 413(1)(b)(iii) has been misapplied; and 3) Mr. T. has failed to satisfy other requirements of § 413(1).

DISCUSSION

Because the Appeals Board finds Jones’ first argument regarding appointment of a medical panel to be determinative, the Appeals Board limits its discussion to that issue.

Background. For several years prior to the events that give rise to Mr. T.’s claim, he worked for Jones as an “estimator.” This was a sedentary office job that required no substantial lifting and could be performed sitting or standing, as desired. Mr. T. could also work at home.

On June 3, 2002, Mr. T. and a co-worker were involved in a fight. Mr. T. suffered a fractured right hip and ruptured cecum,¹ both corrected by surgery. Mr. T. then suffered complications of pulmonary embolism and incisional hernias.² Jones does not dispute that these injuries are compensable under the workers’ compensation system. Mr. T. also suffers from medical

¹ The first part of the large intestine, forming a dilated pouch in which open the ileum, colon, and appendix. *Dorland’s Illustrated Medical Dictionary*, 27th Ed.

² At the time of the evidentiary hearing, Mr. T.’s hernias had not yet been surgically repaired.

conditions unrelated to his work, including sleep apnea, depressive and panic disorder, and vascular/dermatologic problems with his feet.

Dr. Hinton, Mr. T.'s treating physician, believes Mr. T.'s medical problems will require him to be "off task" 30% of every 8-hour work day and will prevent him from completing a full day's work on more than 6 days each month. Dr. Hinton also believes Mr. T. will be able to work at only 20% efficiency when compared to an average worker. Finally, Dr. Hinton believes Mr. T. cannot obtain and retain full-time work in a competitive work environment.

Jones' medical consultants express substantially different opinions of Mr. T.'s medical capabilities. Dr. Knoebel believes Mr. T. can perform "semi-sedentary" work, divided equally between sitting and standing. According to Dr. Knoebel, Mr. T. could return to his work as an estimator, provided that accommodation was available for the bowel problems related to Mr. T.'s intestinal injury. A second consultant, Dr. Nelson, notes Mr. T.'s bowel and hip problems, but views Mr. T. as relatively healthy with minimal functional problems. According to Dr. Nelson, Mr. T. "should have no problems performing duties associated with a routine desk job."

Requirements for appointment of medical panel. Section 34A-2-601 of the Act permits the Commission to refer the medical aspects of disputed workers' compensation claims to impartial medical panels. The Commission's Rule R602-2-2 identifies the circumstances which justify appointment of a medical panel. As applicable to Mr. T.'s claim, Rule 602-2-2 provides:

A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are: . . . 4. Conflicting medical opinions related to a claim of permanent total disability. . . .

The medical opinions submitted by the parties in this case show a substantial difference of opinion about Mr. T.'s medical abilities and limitations. This dispute is significant because Mr. T.'s abilities and limitations directly relate to several of § 413(1) tests for permanent total disability. The Appeals Board therefore concludes that the Rule 602-2-2 requires appointment of a medical panel in this case.

The Appeals Board sets aside Judge Sessions' decision of May 5, 2005, and remands this matter to the Adjudication Division. On remand, the ALJ will issue a new interim order appropriate for referral to a medical panel. After completion of the medical panel process, the ALJ will issue a new decision that addresses Mr. T.'s claim in light of all the evidence, including the medical panel's opinion. Any party dissatisfied with such decision may seek review as permitted by law.

ORDER

The Appeals Board grants Jones' motion for review and remands this matter to the Adjudication Division for further proceedings consistent with this decision. It is so ordered.

Dated this 13th day of June, 2006.

Colleen S. Colton, Chair

Joseph E. Hatch

Jathan Janove³

³ Due to Patricia Drawe's inability to participate in this matter, Jathan Janove has been selected to serve as a member of the Appeals Board pursuant to § 34A-1-303 of the Utah Labor Commission Act.

